was an entirely proper way to make a contract from the standpoint of the law of agency; and, furthermore, government contracts are usually made through the chief official of the appropriate department. It was, then, a matter for the administrative law of Spain to determine what agent should bring suit in the name of the King of Spain. Unquestionably it might settle, on whomsoever it would, — the Minister of Marine as well as any other; but it owed it to the defendant company to have the name of the true principal appear on the writ. Properly the Minister of Marine sues not as successor of the official by whom the contract was made, but as the present agent of the King of Spain. The House may have been, and probably was, influenced by a desire to aid the Spanish government; but the result will be confusion in international law on this point.

LIABILITY OF A PRINCIPAL FOR THE MISREPRESENTATIONS OF HIS AGENT. — That a principal is liable in an action of tort for the expressly authorized misrepresentations of his agent is not disputed. Further, he is liable for misrepresentations not expressly authorized if made by his agent in the course of his employment. *Barwick* v. *English, etc., Bank*, L. R. 2 Ex. 259. The real difficulty in cases of the latter sort is to determine whether the agent was in fact acting in the course of his employment when he made the representation. In the leading case of *Grant* v. *Norway*, 10 C. B. 665, it was decided that the indorsee of a bill of lading issued by the master of a vessel when no goods had been received by him, could not recover from the proprietor of the vessel, because the master was not acting in the course of his employment in issuing the bill of lading before he had received the goods which it purported to represent. The actual decision is supportable on the ground that the indorser could not have recovered because he was party to the agent's fraud, and the indorsee stands in no better position. *Dows* v. *Perrin*, 16 N. Y. 325. But it is submitted that the decision cannot properly be rested upon the ground that the servant was not acting in the course of his employment. It is among the duties of the master of a vessel to issue bills of lading. If the master had issued the bill of lading mistakenly supposing that he had received the goods, it could scarcely be contended that he was not acting in the course of his employment. The nature of the act rather than the mental state of the agent should, according to the best opinion, be regarded in determining whether the act is in the course of employment. *Howe* v. *Newmarch*, 12 Allen (Mass.) 49. Adopting this view, a principal should be held liable whether the agent's representation is or is not intentionally false. *Armour* v. *Mich. Cent. Ry. Co.*, 65 N. Y. 111.

Nevertheless the House of Lords has recently approved the doctrine of *Grant* v. *Norway*, in *George Whitechurch, Ltd.*, v. *Cavanagh*, [1902] A. C. 117. In that case the secretary of the company, to accommodate a friend, certified a transfer of shares directed to Cavanagh, though the certificates for the shares were not lodged in the company's office, as the certification represented. The case cannot be supported, as *Grant* v. *Norway* can, on the ground that Cavanagh was affected by the fraud of one acting in collusion with the agent, for the misrepresentation was made directly to him. See 1 PALMER, COMPANY PREC., *6th ed.*, 323. The judges seem to find difficulty in holding liable a principal so free from all blame. But it is to be remembered that if principals escaped whenever free from blame, there would be no special law of agency.

Some of the Law Lords take occasion to approve, also, the doctrine of *British Mut. Banking Co.* v. *Charnwood, etc., Co.*, 18 Q. B. D. 714, in which it is decided that a principal is not liable for the misrepresentations of his agent unless such misrepresentations were made for the benefit of the principal. This doctrine has been generally accepted as the English law, and disapproval of it was hardly to be expected. Yet it is believed that it is unsound, for, as already suggested, the nature of the act should alone be regarded in determining whether it was done in the course of employment. A servant about his master's business acts for his own benefit and not for the benefit of his master when he engages in a conversation with a friend, or indulges in a nap; yet if injury results to a third party from his inattention to duty, the master would be liable to respond in damages. There seems to be no reason for applying a different rule when the tort which the servant commits is wilful rather than negligent. The American courts, in determining a principal's liability, do not inquire whether the agent was acting for his principal's benefit either in cases of intentional or unintentional tort.

RECENT CASES.

AGENCY — WILFUL MISREPRESENTATIONS BY AGENT — PRINCIPAL'S LIABILITY TO THIRD PERSONS. — The secretary of a company, to accommodate a friend, certified a transfer of shares, though the certificates were not lodged in the company's office as represented. *Held*, that the company is not liable to the transferee for the misrepresentation of its secretary. *George Whitechurch, Ltd.* v. *Cavanagh*, [1902] A. C. 117. See NOTES, p. 61.

BANKRUPTCY — DEBTS NOT DISCHARGEABLE — JUDGMENT FOR LIBEL. — *Held*, that libel is a "wilful and malicious injury to the person" within the meaning of c. 3, § 17 of the Bankruptcy Act of 1898, and therefore that proceedings under the Act do not discharge a judgment obtained in an action for libel. *McDonald* v. *Brown*, 51 Atl. Rep. 213 (R. I.).

Proof of actual malice is not necessary to maintain an action for libel. *Ullrich* v. *N. Y. Press Co.* (Sup. Ct., Tr. T.), 23 Misc. (N. Y.) 168; ODGERS, LIBEL AND SLANDER, 2d ed. 269. It is, however, generally held that so-called malice in law, or absence of legal excuse, is an essential element. *Bromage* v. *Prosser*, 4 B. & C. 247; *Barr* v. *Moore*, 87 Pa. St. 385. The court in the principal case applied to the word "malicious" in the Act this fictitious meaning. But, since the section in question in effect imposes a penalty, it would seem more reasonable to hold that Congress intended to use the word in its natural sense, requiring a bad *animus* to be shown. This seems to be the first case of a judgment for libel arising under this section. The only other cases to be found in which this clause was interpreted are those of judgments for seduction and criminal conversation. The court's construction of "malicious" finds support in these cases. *In re Maples*, 105 Fed. Rep. 919; *Colwell* v. *Tinker*, 169 N. Y. 531. As there may be a negligent publication, the decision, in holding that a libel is necessarily wilful, seems further open to criticism. See *Vitz Etelly* v. *Mundie's Select Library*, Ltd., [1900] 2 Q. B. 170. Libel was properly regarded as an "injury to the person" within the meaning of the Act. See *In re Freche*, 109 Fed. Rep. 620; *Colwell* v. *Tinker*, *supra*.

BANKRUPTCY — PETITION BY COMMITTEE OF A LUNATIC. — A petition in bankruptcy was filed by the committee of a lunatic. *Held*, that the court had no jurisdiction to entertain such a petition. *In the matter of Eisenberg*, 27 N. Y. L. J. 1909 (Sept. 29, 1902). See Notes, p. 56.

CONFLICT OF LAWS — INTERPRETATION OF WILL OF PERSONALTY — LAW OF TESTATOR'S DOMICILE. — A testator domiciled in England bequeathed money to the next of kin of A, domiciled in Germany. The next of kin according to the German law was A's niece, according to the English law his step-sister. *Held*, that the will must be interpreted according to English law. *In re Fergusson's Will*, [1902] 1 Ch. 483 (Eng.).